

ORDINANCE NO. 07-01

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A THIRD AMENDMENT TO LICENSE AGREEMENT DATED OCTOBER 28, 1993 WITH BATTERS BOX U.S.A., INC., A FLORIDA CORPORATION, FORMERLY KNOWN AS BATTER'S BOX U.S.A., INC., TO OPERATE AND ADMINISTER BATTING CAGES AND PRO SHOPS AT BENNY BABCOCK PARK AND BUCKY DENT PARK IN THE CITY OF HIALEAH, FLORIDA IN A FORM ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, on October 28, 1993, the City of Hialeah entered into a License Agreement with Batter's Box U.S.A., Inc., a Florida corporation, whereby the City of Hialeah granted a license to Batter's Box U.S.A., Inc. for a term of five (5) years, commencing on October 1, 1993, to provide batting cages, pro-shops and concession stands to be located in Bucky Dent Park and Sparks Park for the sum of \$1,000.00 for each site per month plus a percentage of gross revenues, with renewal options upon mayoral approval; and

WHEREAS, in 1994, the City of Hialeah and Batter's Box U.S.A., Inc. amended the License agreement to provide, inter alia, that the City would retain its existing concession stand facilities on the park sites and that Batter's Box U.S.A. was granted the right to construct as well as operate its facilities as indicated on a site plan and architectural drawings; and

WHEREAS, in 1996, the City of Hialeah and Batter's Box U.S.A. amended the License Agreement because the City was constructing an aquatic facility at Bucky Dent Park contiguous to the batting cages and Batter's Box U.S.A., Inc. agreed to alterations, including landscaping and a wall/fence, built by the City to enhance the appearance of the shared boundary; and

WHEREAS, the Mayor of the City of Hialeah, Florida, has determined that it is in the best interest of the City of Hialeah and Batters Box U.S.A., Inc. to enter into a third amendment to that certain License Agreement between the City of Hialeah and Batter's Box U.S.A., Inc. dated October 28, 1993; and

WHEREAS, the license agreement will be amended to provide an increase in monthly fees per site from \$1,000.00 to \$1,500.00 in exchange for the cancellation of additional license payments based on a percentage of gross revenues, which did not produce any income during the 13 years of operation and which are not expected to produce any income in the future; and

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WHEREAS, the license agreement will be amended to provide that Batters Box U.S.A., Inc., will not be allowed to operate the concession stands at Bucky Dent Park, Benny Babcock Park, and Sparks Park except however that Batters Box U.S.A., Inc., may sell potato chips, cookies, candies, Coca-Cola products, and Gatorade sports drinks from the pro shops at Benny Babcock Park, Bucky Dent Park, and Sparks Park; and

WHEREAS, Batters Box U.S.A., Inc., formerly known as Batter's Box U.S.A., Inc., agrees to give the City a commitment of \$200,000.00 which will be used as a 50% municipal match for a minimum \$400,00.00 FRDAP grant to be used for building costs at Benny Babcock Park, and the City will sell the three batting cages at Benny Babcock Park to Batters Box U.S.A., Inc. for \$28,000.00.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1:

The City of Hialeah, Florida hereby authorizes the Mayor and City Clerk, as attesting witness, on behalf of the City, to enter into a Third Amendment to License Agreement dated October 28, 1993 with Batters Box U.S.A., Inc., a Florida corporation, formerly known as Batter's Box U.S.A., Inc., to operate and administer batting cages and pro shops at Benny Babcock Park and Bucky Dent Park in the City of Hialeah, Florida in a form attached hereto and made a part hereof as Exhibit "1".

Section 2: **Repeal of Ordinances.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: **Penalties.**

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding 60 days, or both, in the discretion of the Court.

Section 4: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such

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invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor of the City of Hialeah, Florida, and signed by the Mayor of the City of Hialeah, Florida.

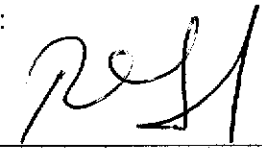
PASSED and ADOPTED this 9th day of January, 2007

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



Esteban Bovo
Council President

Attest:



Rafael E. Granado, City Clerk

Approved on this 10 day of January, 2007



Mayor Julio Robaina

Approved as to legal sufficiency and form:



William M. Grodnick, City Attorney

Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, L. Gonzalez, Hernandez, Miel and Yedra voting "Yes".